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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,990

03/12/2004

Vijay Deshmukh

5693P043

6882

48102

7590

10/02/2006

NETWORK APPLIANCE/BLAKELY  
12400 WILSHIRE BLVD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER

MOFIZ, APU M

ART UNIT

PAPER NUMBER

2165

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/798,990

Applicant(s)

DESHMUKH ET AL.

Examiner

Apu M. Mofiz

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/26/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 10/798987, claims 1-30 of 10/799861 and claims 1-38 of 10800163. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the instant application are claiming common subject matter and they are substantially similar in scope and they use the same limitations, using varying terminology. They are not patentably distinct from each other because claims of copending Application No. 10/798987, 10/799861 and 10800163 contain every element of claims 1-29 of the instant specification.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651."

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 4, Examiner is unclear as to what is meant by "average access time if files".

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,2,4,5,9,10,12,13,17-20 and 22-27 rejected under 35 U.S.C. 102(b) as being anticipated by Kao, US Patent No. 5,313,631.

As to claims 1,9,17-20, 22-24 and 27-29, Kao teaches a method for collecting information from a storage server comprising: using an agent to scan the storage server and collecting information regarding files stored thereon (FIG.1; FIG.2; abstract; col 1, lines 66-67; col 2, lines 1-25, lines 49-50; col 4, lines 1-67); and using the agent to summarize the information and create a summary, and storing the summary on a database server (FIG.1; FIG.2; abstract; col 1, lines 66-67; col 2, lines 1-25, lines 49-50; col 4, lines 1-67).

As to claims 2,10,18 and 25, Kao teaches analyzing the files and generating statistics regarding the files (FIG.1; FIG.2; abstract; col 1, lines 66-67; col 2, lines 1-25, lines 49-50; col 4, lines 1-67).

As to claims 4,12 and 26, Kao teaches wherein the statistics comprise a number of files, a size of files, and an average access time if files (FIG.1; FIG.2; abstract; col 1, lines 66-67; col 2, lines 1-25, lines 49-50; col 4, lines 1-67).

As to claims 5 and 13, Kao teaches transferring the summary to a multi-appliance management application (MMA) before storing the summary on the database Server (FIG.1; FIG.2; abstract; col 1, lines 66-67; col 2, lines 1-25, lines 49-50; col 4, lines 1-67).

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3,6,7,11,14,15,21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kao in view of Horn, US Patent Publication No. 2005/0050269.

The teachings of Kao have been discussed above.

As to claim 3,6,7,11,14,15,21 and 28, Kao teaches analyzing files and generating file statistics data in a database/table (FIG.1; FIG.2; abstract; col 1, lines 66-67; col 2, lines 1-25, lines 49-50; col 4, lines 1-67).

Kao does not explicitly teach generating histogram from the collected information/statistics for visualization.

Horn teaches generating histogram from the collected information/statistics for visualization (paragraph [0011]).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Kao with the teachings of Horn to include generating histogram from the collected information/statistics for visualization with the motivation to organize storage system data in real time (Horn, paragraph [0010]).

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8. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kao in view of Dave Marshall, Threads: Basic Theory and Libraries, May 1999, pages 2-32 and hereinafter referred to as Marshall.

As to claims 8 and 16, Kao teaches using a thread (i.e. a lightweight process) to collect file system (file system includes files/directories and in some operating systems all files, directories are considered files) information (FIG.1; FIG.2; abstract; col 1, lines 66-67; col 2, lines 1-25, lines 49-50; col 4, lines 1-67).

Kao does not teach using multiple threads.

Marshall teaches multiple threads (page 4).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Kao with the teachings of Marshall to include using multiple threads with the motivation to use fewer system resources, improve program structure and also improve application responsiveness (Marshall, page 4).

#### ***Points of Contact***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Apu M. Mofiz whose telephone number is (571) 272-4080. The examiner can normally be reached on Monday – Thursday 8:00 A.M. to 4:30 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached at (571) 272-4146. The fax numbers for the group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.



Apu M. Mofiz  
Primary Patent Examiner  
Technology Center 2100

September 07, 2006